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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,729

03/14/2005

Ralph Stripling

OT-5075

8865

26584 7590 08/03/2007  
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EXAMINER

NICHOLSON III, LESLIE AUGUST

ART UNIT

PAPER NUMBER

3651

MAIL DATE

DELIVERY MODE

08/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

Application Number: 10/527,729  
Filing Date: March 14, 2005  
Appellant(s): STRIPLING ET AL.

**AUG 03 2007**

**GROUP 3600**

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For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 6/12/2007 appealing from the Office action mailed 11/7/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

Art Unit: 3651

4,863,006	KOTKATA et al.	09-1989
6,601,688	STOXEN	08-2003
6,267,219	SPANNHAKE et al.	07-2001

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2,3,4,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota USP 5,622,246 in view of Kotkata USP 4,863,006.

Kubota discloses a similar people mover comprising:

- An endless tread belt formed from several tread elements connected to one another, which is driven by a drive unit about a first and second reversal point (at least fig.1)
- A side skirt (combination of elements 410-430,512,523,811-831) on the tread elements comprising flange elements (410,430) joined to the tread belt and bridge elements (412, 423) connected movably to the flange elements
- A plurality of marking elements (811,821,831, and lower part of flange 410,430) arranged in a non-continuous line on the side skirt along the circulating direction and having a limited width perpendicular to the circulating direction (fig.4)

- A rib (O<sub>41</sub>, O<sub>42</sub>, O<sub>43</sub>) provided on each of the flange elements and bridge elements of the side skirt, wherein the ribs are arranged in series essentially along a straight line in a linear area of the people mover (at least fig.4)
- The plurality of marking elements are clips and a clip is provided for each flange element or bridge element (fig.4)

Kubota does not expressly disclose a sensor arranged adjacent to the side skirt, the sensor having a limited detection range perpendicular to a circulating direction of the side skirt, wherein the sensor is a noncontact sensor.

Kotkata teaches a sensor (10) arranged adjacent to the side skirt, the sensor having a limited detection range perpendicular to a circulating direction of the side skirt, wherein the sensor is a noncontact sensor, for the purpose of detecting a problem with the escalator (at least C2/L26-50).

At the time of invention it would have been obvious to one having ordinary skill in the art to employ a sensor arranged adjacent to the side skirt, the sensor having a limited detection range perpendicular to a circulating direction of the side skirt, wherein the sensor is a noncontact sensor, as taught by Kotkata, in the device of Kubota, for the purpose of detecting a problem with the escalator.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota USP 5,622,246 in view of Kotkata USP 4,863,006 further in view of Stoxen USP 6,601,688.

Kubota discloses all the limitations of the claim, but does not expressly disclose the sensor being that of a magnetic sensor.

Stoxen teaches a sensor being that of a magnetic sensor (C2/L12-14) for the purpose of the sensor detecting the metallic material of the marking element.

At the time of invention it would have been obvious to one having ordinary skill in the art to employ the use of a magnetic sensor, as taught by Stoxen, in the device of Kubota, for the purpose of the sensor detecting the metallic material of the marking element.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota USP 5,622,246 in view of Kotkata USP 4,863,006 further in view of Spannhake, USP 6,267,219.

Kubota discloses all the limitations of the claim, but does not expressly disclose two of the sensors connected in series.

Spannhake teaches two of the sensors connected in series for the purpose of the software program identifying the data signal at a circuit level (C3/L4-19).

At the time of invention it would have been obvious to one having ordinary skill in the art to have two of the sensors connected in series, as taught by Spannhake, in the device of Kubota, for the purpose of the software program identifying the data signal at a circuit level.

#### **(10) Response to Argument**

35 USC 103 rejections over Kubota USP 5,622,246 in view of Kotkata USP 4,863,006

Claims 1,4,10,11:

Appellant argues there is nothing in Kubota that discloses that the vertical links 811,821,831 are marking elements. In response, claim 1 does not define what the marking elements are. Applicant states the marking elements are detected by the sensor and to see page 5 of the specification, however, the claim does not recite the marking elements being detected by the sensor, a method of detecting the marking elements by the sensor, nor means for detecting the marking elements. Claim 1 claims the sensor and marking elements separately without any language relating the two, except that they are comprised by the people mover. Therefore, since claim 1 broadly claims "marking elements", any elements arranged in a line on the flange elements and the bridge elements along the circulating direction and having a limited width perpendicular to the circulating direction can be considered marking elements.

Appellant further argues Kubota does not teach or suggest a plurality of marking elements arranged in a line on the flange elements and the bridge elements along the circulating direction and having a limited width perpendicular to the circulating direction can be considered marking elements. In response, the marking elements (811,821,831, and lower part of flange 410,430) are arranged in a line on the flange elements (410,430) and the bridge elements (412,423) along the circulating direction and having a limited width perpendicular to the circulating direction as shown in figures 1 and 4 of Kubota.

Appellant further argues there are no marking elements that interact with the sensors. In response, none of the claims recite the marking elements interacting with the sensors.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

Claim 2:

Appellant argues there is nothing in Kubota that teaches that O<sub>41</sub>, O<sub>42</sub>, O<sub>43</sub> serves the detection of the flange element or bridge element by the sensor. In response, the sensor of Kotkata is fully capable of detecting the ribs for the purpose of detecting a problem with the escalator as disclosed in at least C2/L26-50.

Claim 3:

Appellant argues there is nothing in Kubota that teaches that the sensor is constructed such that it detects an interruption in the rib series, there is no motivation to combine Kubota with Kotkata in order for O<sub>41</sub>, O<sub>42</sub>, O<sub>43</sub> which are pins, to be constructed such that they detect an interruption in the series, and there is no reason why any person skilled in the art would think that the pins could serve as rib series. In response, the sensor of Kotkata is fully capable of detecting an interruption in the rib series for the purpose of detecting a problem with the escalator as disclosed in at least C2/L26-50.

35 USC 103 rejections over Kubota USP 5,622,246 in view of Kotkata USP 4,863,006, further in view of Stoxen 6,601,688



Art Unit: 3651

Appellant argues Stoxen does not remedy the deficiencies of Kubota and  
Kotkata. In response, the Examiner disagrees for reasons shown above.

35 USC 103 rejections over Kubota USP 5,622,246 in view of Kotkata USP  
4,863,006, further in view of Spannhake 6,267,219

Appellant argues Spannhake does not remedy the deficiencies of Kubota and  
Kotkata. In response, the Examiner disagrees for reasons shown above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the  
Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



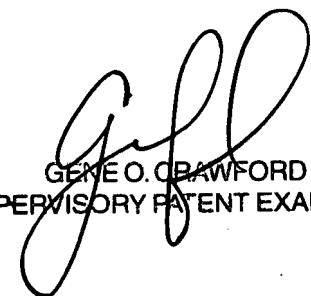
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